



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2012-0738

RIN 1625-AA00

Fixed and Moving Safety Zone; Around the USACE Bank Grading Units, Mat Sinking Unit, and the M/V Harrison and M/V William James

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed and moving safety zone for all waters within 100 yards of the US Army Corps of Engineers (USACE) Bank Grading Units, Mat Sinking Unit and M/V Harrison and M/V William James while operating on the Mississippi River. This safety zone is needed to protect vessels and mariners from the safety hazards associated with bank grading and mat sinking operations performed by the USACE. Entry into this zone is prohibited unless specifically authorized by the cognizant Captain of the Port (COTP) (COTP Lower Mississippi River for MM 303.0 to MM 869.0 or COTP Ohio Valley MM 869.0 to MM 958.0) or a designated representative.

DATES: This rule is effective with actual notice from July 31,

2012 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 8:00 a.m. November 1, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0738. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail CWO David Bear, U. S. Coast Guard; telephone 901-521-4728, e-mail david.m.bear@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of Proposed Rulemaking |

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| M/V | Motor Vessel |
| COTP | Captain of the Port |
| MM | Mile Marker |
| USACE | United States Army Corps of Engineers |

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as publication of an NPRM would be impracticable. The Coast Guard received notification from the USACE on or about July 13, 2012 about necessary bank grading and mat laying operations by the Vicksburg District USACE.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing a full 30 days notice before the final rule effective date is would be impracticable for the reasons described above. Immediate action implementing this safety zone is needed to

protect persons and property from the safety hazards associated with bank grading and mat sinking operations on the Mississippi River.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The COTPs Lower Mississippi River and Ohio Valley received notification from the USACE that the USACE will be performing bank grading and mat sinking operations on the Mississippi River. These operations are vital in maintaining a navigable channel for commerce to operate on the river and can only be done during certain times of the year, and under specific water levels and conditions. The fact that the operations are taking place on a highly transited waterway presents hazards to both the waterway traffic and the workers involved in the operations. A fixed and moving safety zone is needed to protect mariners, workers, vessels and other property from the hazards associated with bank grading and mat laying operations. Additionally, a fixed and moving safety zone will assist in timely completion of the USACE operations.

The USACE also requested that the Coast Guard implement a safety zone restricting traffic on the waterway to protect both mariners and persons involved in the operations, specifically the Bank Grading Units, Mat Sinking Unit, and the M/V Harrison and M/V William James and any other operating units. The USACE informed the USCG that during the effective period, USACE operations will require waterway closures lasting approximately one hour at a time when no traffic will be allowed to transit within 500 yards of the operations. Broadcast Notices to Mariners (BNM) and Marine Safety Information Bulletins (MSIBs) can be issued by the Coast Guard to inform marine traffic of these times based on notice provided by the USACE.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary fixed and moving safety zone for all waters within 100 yards of the USACE Bank Grading Unit, Mat Sinking Unit, and the M/V Harrison and M/V William James while conducting operations on the Mississippi River. This safety zone is intended to protect persons and property, providing the necessary safety measures affording the USACE to continue with ongoing and timely USACE operations necessary to maintain the commercial channel for the designated areas on the Mississippi River. While these operations are taking place, vessels are required to operate at a minimum safe

speed when transiting within all waters encompassing a 100 yard radius around the USACE operating units and vessels are prohibited from transiting into, through, or within a 50 yard radius of the USACE operating units and vessels, unless specifically authorized as explained below. Anchoring, stopping, remaining or drifting without power within the safety zone is prohibited at all times.

Requests to deviate from these restrictions may be made to the applicable COTP and will be considered on a case-by-case basis. The COTP Lower Mississippi River may be contacted by telephone at 866-777-2784. The COTP Ohio Valley may be contacted at 1-800-253-7465. All COTPs can be reached by VHF-FM channel 16. The respective Captain of the Port or a designated representative will inform the public through broadcast notice to mariners of the location of the Bank Grading Units, Mat Sinking Unit and the M/V Harrison and M/V William James effective period for the safety zone and of any changes in the effective period for the safety zone. This rule is effective from August 2, 2012 through 8 a.m. November 1, 2012, local time. If emergency dredging is completed earlier, enforcement of the safety zone will be curtailed.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize

our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This regulation is not a significant regulatory action because it will only be in effect for limited periods of time and will not substantially obstruct maritime traffic. Notifications to the marine community will be made through broadcast notice to mariners and electronic mail. Notices of changes to the safety zone and effective times will also be made. Deviation from the restrictions may be requested from the COTP or designated representative and will be considered on a case-by-case basis. The impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Mississippi River, effective from August 2, 2012 through November 1, 2012, local time. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule allows for the passing of vessels. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels. Notifications to the marine community will be made through broadcast notice to mariners and electronic mail. Notices of changes to the safety zone and effective times will also be made. Deviation from the restrictions may be requested from the COTP or designated representative and will be considered on a case-by-case basis.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have

implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the ADDRESSES section.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306,

3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T08-0738 to read as follows:

§ 165.T08-0738 Fixed and Moving Safety Zone; Around the USACE Bank Grading Units, Mat Sinking Units and the M/V Harrison and M/V William James.

(a) Location. The following area is a fixed and moving safety zone: all waters of the Mississippi River within 100 yards of the Bank Grading Units, Mat Sinking Unit and the M/V Harrison and M/V William James.

(b) Effective dates. This section is effective from 6 a.m. July 31, 2012 through 8 a.m. November 1, 2012, local time.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the COTP Lower Mississippi River, COTP Ohio Valley or a designated representative.

(2) Vessels shall not enter the moving safety zone.

(3) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP Lower Mississippi River, COTP Ohio Valley or a designated representative. They may be contacted on VHF-FM channels 16 or The COTP Lower Mississippi River may be contacted by telephone at 866-777-2784. The COTP Ohio Valley may be contacted at 1-800-253-

7465.

(4) All persons and vessels shall comply with the instructions of the COTP Lower Mississippi River, COTP Ohio Valley and designated personnel. Designated personnel include commissioned, warrant, petty officers of the U.S. Coast Guard and Government employees of the US Army Corps of Engineers.

(5) Minimum speed will be required of all vessels transiting within 50 yards of the moving safety zone. Vessels receiving Captain of the Port authority to enter the safety zone must also transit at a minimum safe speed and in accordance with the direction of the Captain of the Port authorizing transit.

(6) No vessel shall anchor, stop, remain or drift without power at anytime in the moving safety zone.

(d) Informational broadcasts. The Captain of the Port, Lower Mississippi River or a designated representative will inform the public through broadcast notices to mariners (BNM) of the effective period for the safety zone and of any changes in the effective period or size of the safety zone.

Dated: August 2, 2012

W. M. DRELLING
Captain, U. S. Coast Guard
Captain of the Port Lower Mississippi

L. W. HEWETT
Captain, U. S. Coast Guard
Captain of the Port Ohio Valley

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